

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
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2004 MAY 26 P 3:52

U.S. DISTRICT COURT
DISTRICT OF MASS.

In the Matter of the Arbitration Proceedings between)
)
JOHN HANCOCK LIFE INSURANCE COMPANY,)
Petitioner,)
)
and)
)
SPHERE DRAKE INSURANCE LIMITED,)
Respondent)
)
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Civil Action No.:
04-10181MLW

**SPHERE DRAKE'S MOTION TO STRIKE AFFIDAVIT OF
MALCOLM J. BEACHAM AND PORTIONS OF JOHN HANCOCK'S RULE 56.1
STATEMENT AND MEMORANDUM IN SUPPORT OF HANCOCK'S
MOTION FOR SUMMARY JUDGMENT**

Sphere Drake Insurance Limited ("Sphere Drake") respectfully moves this Court to strike the Affidavit of Malcolm J. Beacham in Support of John Hancock's Motion for Summary Judgment ("Beacham Affidavit") and the statements contained in John Hancock's Local Rule 56.1 Statement of Material Facts and Memorandum in Support of Hancock's Motion for Summary Judgment that rely on Beacham's affidavit for support. In particular, Sphere Drake requests that the following paragraphs of Hancock's Local Rule 56.1 Statement, as well as the statements in the Memorandum in Support of Hancock's Motion for Summary Judgment that rely on those paragraphs or the Beacham Affidavit, be stricken: 2, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, and 41.

The Beacham Affidavit is an improper attempt by John Hancock Life Insurance Company ("Hancock") to usurp this Court's province of interpreting the terms of the purported contracts at issue in this litigation. As Hancock concedes, and as the terms make clear, those

purported contracts are clear and unambiguous. Accordingly, the Court should not consider extrinsic evidence such as the Beacham Affidavit, but should instead interpret the purported contracts based solely on their plain language. Sphere Drake respectfully requests, therefore, that the Court strike the Beacham Affidavit in its entirety, and further, strike all "facts" in Hancock's Local Rule 56.1 Statement of Material Facts and in the Memorandum In Support of John Hancock Life Insurance Company's Motion For Summary Judgment, that are supported by the Beacham Affidavit.

Alternatively, if the Court decides to consider extrinsic evidence to aid its interpretation of the purported contracts, Sphere Drake has submitted the Affidavit of James H. Hunt and requests that the Court permit discovery.

In further support of this Motion, Sphere Drake submits herewith its Memorandum in Support.

REQUEST FOR ORAL ARGUMENT

Pursuant to L. R. 7.1(D), Sphere Drake respectfully requests that this Court hold oral argument on Sphere Drake's Motion To Strike as Sphere Drake believes oral argument will assist the Court in ruling on the pending motion.

SPHERE DRAKE INSURANCE LIMITED
By its attorneys,



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LOCAL RULE 7.1(A)(2) CERTIFICATE


I, Andrea Peraner-Sweet, hereby certify that counsel for Sphere Drake Insurance Limited has conferred with counsel for the Petitioner, John Hancock Life Insurance Company, before filing Sphere Drake's Motion to Strike Affidavit of Malcolm J. Beacham in a good faith effort to resolve the issues set forth in the motion, but the parties were unable to resolve these issues.



Andrea Peraner-Sweet

CERTIFICATE OF SERVICE

I, Andrea Peraner-Sweet, hereby certify that a copy of this document was served upon all counsel of record by hand on May 26, 2004.


Andrea Peraner-Sweet

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